

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MICHAEL A. McGUIRE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 2:19-CV-174-WKW
)	[WO]
STEVEN T. MARSHALL, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Before the court is Plaintiffs' Motion for Attorney Fees and Costs. (Doc. # 144.) On May 28, 2024, Defendants filed a notice of appeal to the United States Court of Appeals for the Eleventh Circuit. (Doc. # 140.)

Filing a notice of appeal generally divests a district court of jurisdiction on any matters involved in the appeal. *See Shivers v. Hill*, 205 F. App'x 788, 789 (11th Cir. 2006). However, during an appeal, jurisdiction is retained by the district court to rule on matters collateral to the issues on appeal, including motions for attorney's fees and costs. *See Mahone v. Ray*, 326 F.3d 1176, 1179 (11th Cir. 2003); *Briggs v. Briggs*, 260 F. App'x 164, 165 (11th Cir. 2007). As stated in the Advisory Committee Notes to Rule 54(d)(2), "(i)f an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved." Fed. R. Civ.

P. 54, Advisory Committee Notes (1993 Amendments); *see also Liberty Mut. Fire Ins. Co. v. State Farm Fla. Ins. Co.*, No. 15-20941-CIV, 2018 WL 9708621, at * 2 (S.D. Fla. Sept. 5, 2018) (deferring motions for attorney's fees and costs, with leave to re-file after final appellate decision); *Am. Infoage, LLC v. Regions Bank*, No. 8:13-cv-1533-T-23JSS, 2015 WL 5915969, at *2 (M.D. Fla. Oct. 8, 2015) (denying motion for attorneys' fees and costs, without prejudice, and with leave to re-file after entry of appellate court's decision).

Here, in light of the pending appeal, and in the interests of judicial economy, the court exercises its discretion to deny the instant fee and cost motion without prejudice and will allow Plaintiffs to refile the motion after the appeal has been resolved.

Therefore, it is ORDERED that Plaintiffs' Motion for Attorney Fees and Costs (Doc. # 144) is DENIED without prejudice, and Plaintiffs are granted leave to refile the motion within thirty (30) days after the Eleventh Circuit enters its mandate disposing of the appeal in this case.

DONE this 7th day of June, 2024.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE